

Competitive Markets & Policy Division

Mergers and Acquisitions, Direct and Indirect Transfers of Control or CCNs, Change in Majority Shareholder

What transactions require approval?

All mergers between certificated entities require approval. A change in ownership, *at any level of ownership*, requires approval. If the certificated entity's parent's parent is having a change in majority shareholder, for example, *Authority approval is required*. Companies emerging from bankruptcy are considered to be transferring control of the certificated entity from the old company to the newly-financed company. Mergers are considered under T.C.A. § 65-4-112, while transfers of control, direct or indirect, are considered under T.C.A. § 65-4-113.

What should the application include?

Some sample applications are available on the website to give an idea of structure. For all mergers and transfers of control (including those accomplished by stock transfer), the application should include: A description of the transaction; a public interest statement; a description of any new owners, including passive investors (if there are many small shareholders, a report of major shareholders, often defined as those who own 5% or more of company stock and all who have Board appointment rights or hands-on management rights, is sufficient); a pre- and post-transaction ownership graphic; information on whether or not customers will have a change in available service and/or prices; information on whether or not customers will have a change in the name of their service provider; a full accounting of any certificate cancellations or name changes that will result from the transaction; and the approximate date on which the transaction will occur. All applications must be accompanied by 13 copies and a \$25 filing fee.

How long will it take?

Complete applications are put on the next available Directors' Conference agenda when they arrive. Agendas are finalized on the Thursday 11 days prior to the Conference. Conferences are held every two weeks, with some exceptions when holidays, industry conferences, or other circumstances prevent a Conference from being scheduled on its usual date. Under regular schedules, if an application arrives at the worst possible time (just after an agenda has been finalized), the wait will be about 4 weeks for a decision. Incomplete applications may take longer, as staff will have to issue data requests to obtain any missing information. Orders can take several weeks to be issued after a decision has been made, but utilities are welcome to act upon the Authority's decision as soon as it has been made.

Customer Base Transfers

What transactions require approval?

Customer base transfers do not require approval in and of themselves, but the notification letter sent to transferring customers does require *prior approval* by the Authority under TRA Rule 1220-4-2-.56(d) (part of the Authority's slamming/cramming rules).

See <http://www.state.tn.us/tra/rules/chapters/1220-04-02.pdf>

What should be included in the application?

The TRA's customer notification letter requirements are very similar to those of the FCC, though there are a few exceptions. The TRA requires that the letter be sent by the *acquired* carrier, while the FCC requires that the letter be sent by the *acquiring* carrier. Both can be satisfied with one mailing if both company logos are on the letter. The TRA has this requirement in hopes that customers to be transferred will not throw the letter away unread, as they might do if it comes from a provider other than their own. For this reason, the TRA has a strong preference for the envelope in which the letter is mailed to bear the name of the *acquired* carrier. The FCC has no envelope requirements.

The Application should fully inform the Authority of any price or service changes transferring customers will experience. Like the FCC, the TRA requires that the letters provide the customer with a toll free customer service number in case they have questions and inform customers that they may choose another provider. In addition, the TRA requires that companies inform customers that the acquiring carrier will give them 30 days notice of any rate changes that may occur within 90 days of the transaction, and inform the customer of a date certain on which their accounts will be transferred to the acquiring company if they take no action. All applications should include the text of the letter, the company logos that will be on the letter and information concerning the company name that will be on the envelope. All applications must be accompanied by 13 copies and a \$25 filing fee.

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Who should I contact with questions?

Please contact David McClanahan at David.McClanahan@state.tn.us or at 615-741-2904 ext. 177 with any questions.